

REMARKS

Claims 1 to 17 were pending in the application at the time of examination. Claims 1 to 17 stand rejected as anticipated.

Claims 1 to 10 stand rejected under 35 U.S.C. 101. Claims 1 to 17 stand rejected as obvious.

Claims 1 to 5 stand rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Applicant respectfully traverses the non-statutory subject matter rejection of Claim 1.

To make a *prima facie* non-statutory subject matter rejection, the MPEP directs:

Office personnel have the burden to establish a *prima facie* case that the claimed invention as a whole is directed to solely an abstract idea or to manipulation of abstract ideas or does not produce a useful result. Only when the claim is devoid of any limitation to a practical application in the technological arts should it be rejected under 35 U.S.C. 101. ... Further, when such a rejection is made, Office personnel must expressly state how the language of the claims has been interpreted to support the rejection.

MPEP, §2106, 8th Ed., Rev. 2, p. 2100-7 (May 2004). It is noted that this directive stated only if "...the claimed invention as a whole is directed to solely an abstract idea or to manipulation of abstract ideas . . . should it be rejected [emphasis added]..." Accordingly, failure to adhere to the foregoing tenet means that a *prima facie* case of obviousness has not been made.

Claim 1 recited in part:

...using an application programming interface (API) for each driver in said plurality of separate drivers, wherein

said API is substantially identical for each of said drivers in said plurality of separate drivers;

The Office Action stated in part:

Claims 1 - 5 are directed to method steps which can be practiced mentally in conjunction with pen and paper, therefore they are directed to non-statutory subject matter. Specifically, it is uncertain what performs each of the claimed method steps. Moreover, each of the claimed steps, *inter alia*, using, receiving, accessing and obtaining, can be practiced mentally in conjunctions [sic] with pen and paper.

With respect to the Examiner's assertion that Claim 1 can be practiced mentally, Claim 1 explicitly recited "**using an application programming interface (API) for each driver in said plurality of separate drivers.**" Applicant noted that one skilled in the art would recognize that (1) an "application programming interface" (hereinafter, API) is well known in the art as a computer program that interfaces with an operating system, application, or other computer program; and (2) a "driver" is well known in the art as a computer program that interacts with a particular device or special kind of software.

Applicant further notes that it is well known in the art that a "computer program" is a set of statements or instructions to be used in a computer to bring about a certain result. Therefore, the use of an API, the use of a driver, or both, is limited to use in a computer, and not something practiced mentally, with or without the aid of a pen and paper. Accordingly, the rejection of Claim 1 failed to show that Applicant's claimed invention as a whole, as recited in Claim 1, is directed to solely an abstract idea or to manipulation of abstract ideas. This alone is sufficient to overcome the non-statutory subject matter.

Claim 1 further recited in part:

receiving said single access operation by a merging driver wherein in response to said single access

operation, said merging driver accesses each driver in said plurality of separate drivers through said API.

As noted above, and incorporated herein by reference, APIs and drivers are used on a computer, therefore "receiving by a merging driver" and "accesses each driver in said plurality of separate drivers" each refer to a computer-related process, and not to a mental or abstract process. Again, the rejection failed to meet the MPEP requirement for a *prima facie* case of non-statutory subject matter. Further, the rejection appeared to have considered the claim in a "vacuum" and not in view of the disclosure and the level of skill in the art as required by the MPEP. Applicant respectfully requests reconsideration and withdrawal of the Section 101 rejection of Claim 1.

Claims 2 to 5 depend from Claim 1 and so the foregoing comments are incorporated herein by reference and the rejection of Claims 2 to 5 failed to make a *prima facie* case required by the MPEP. Applicant respectfully requests reconsideration and withdrawal of each of Claims 2 to 5.

Claims 6 to 10 stand rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Applicant respectfully traverses the non-statutory subject matter rejection of Claim 6.

In addition the previously discussed requirements to make a *prima facie* non-statutory subject matter rejection, the MPEP further directs:

"Computer related inventions" include inventions implemented in a computer and inventions employing computer-readable media.

MPEP, §2106, 8th Ed., Rev. 2, p. 2100-5 (May 2004). It is noted that this directive explicitly stated that such inventions included not only inventions employing computer-

readable media, but inventions implemented in a computer, as well.

The MPEP further directed:

A claim that defines one or more acts to be performed defines a process. To be statutory, a claimed computer-related process must either: (A) result in a physical transformation outside the computer . . ., or (B) be limited to a practical application within the technological arts (discussed in ii) below). . .

**ii. COMPUTER-RELATED PROCESSES LIMITED TO A PRACTICAL APPLICATION IN THE TECHNOLOGICAL ARTS**

...A claim is limited to a practical application when the method, as claimed, produces a concrete, tangible and useful result; i.e., the method recited a step or act of producing something that is concrete tangible and useful.

Examples of this type of claimed statutory process include the following:

- A computerized method of optimally controlling transfer, storage and retrieval of data between cache and hard disk storage devices such that the most frequently used data is readily available.

MPEP, §2106, 8th Ed., Rev. 2, p. 2100-15 and 2100-18 (May 2004).

Claim 6 recited in part:

A computer program product comprising computer program code for enabling access of a plurality of data sources by a single access operation wherein each data source in said plurality of data sources requires a separated driver to access the data source so that there is a plurality of separate drivers, said method comprising...

using an application programming interface (API) for each driver...

receiving said single access by a merging driver. . .

The Office Action stated in part:

Claims 6-10 are not limited to tangible embodiments. [T]he medium is not limited to tangible embodiments, instead being defined as including both tangible embodiments ... and intangible embodiments... . As such, the claim is not limited to statutory subject matter and is therefore non-statutory.

Thus, apparently the Office Action asserted that statutory subject matter excludes "intangible embodiments". Applicant respectfully submits there is no basis for this assertion. The MPEP clearly directed that: (1) "inventions implemented in a computer" may be statutory subject matter; (2) a claim that defines one or more acts to be performed defines a process; and (3) a claimed computer-related process is considered proper statutory subject matter if it is limited to a practical application within the technological arts.

Applicant's invention, as recited in Claim 6, meets all of the foregoing requirements, as hereafter discussed.

With respect to inventions implemented in a computer, as previously discussed with respect to Claim 1 and incorporated herein by reference, Claim 6 explicitly recited "using an API for each driver" as well as "receiving ... by a merging driver".

Use of an API or use of a driver necessarily implies use on a computer; therefore, Claim 6 includes at least two computer-implemented elements.

With respect to claims that define a process, Claim 6 recited, *inter alia*, "using an API..." and "receiving ... by a merging driver..." The foregoing are acts to be performed; therefore, Claim 6 defines a process.

With respect to limitation to a practical application within the technological arts, the MPEP explicitly exemplifies a concrete, tangible, and useful process as "a computerized method of optimally controlling transfer, storage and retrieval of data... such that the most frequently used data is readily available.", hereinafter, the MPEP definition.

Applicant's method, as recited in Claim 6, produces access to a plurality of data sources by a single access operation. Applicant's method of Claim 6 parallels the MPEP definition in multiple respects: (1) each include a computer-implemented process, as previously discussed; (2) each control data operations; and (3) each produce access to certain data (a plurality of data sources via access by a single access operation, in the case of Applicant's invention as recited in Claim 6, and the most frequently used data, in the case of the MPEP definition).

If the MPEP definition is deemed concrete, tangible and useful, then certainly Applicant's invention as recited in Claim 6 is at least as concrete, tangible, and useful, as seen by the foregoing parallels. Accordingly, Applicant's invention as recited in Claim 6 is limited to a practical application in the technological arts. Applicant's invention, as recited in Claim 6, meets the MPEP requirements for statutory subject matter of computer-related inventions. Applicant respectfully requests reconsideration and withdrawal of the non-statutory subject matter rejection of Claim 6.

Claims 7 - 10 depend from Claim 6 and so the foregoing comments are incorporated herein by reference and the rejection of Claims 7 to 10 failed to make a *prima facie* case required by the MPEP. Applicant respectfully requests reconsideration and withdrawal of each of Claims 7 to 10.

Claim 1 was further rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,903,890 to Shoji, et al., hereinafter, Shoji, in view of U.S. Patent No. 6, 523,028 to DiDomizio, et al., hereinafter, DiDomizio.

Applicant respectfully traverses the obviousness rejection of Claim 1.

To make a *prima facie* obviousness rejection, the MPEP directs:

**BASIC CONSIDERATIONS WHICH APPLY TO OBVIOUSNESS REJECTIONS**

When applying 35 U.S.C. 103, the following tenets of patent law must be adhered to:

- (A) The claimed invention must be considered as a whole;
- (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination;
- (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and
- (D) Reasonable expectation of success is the standard with which obviousness is determined.

MPEP § 2141, 8th Ed., Rev. 2, p. 2100-120 (May 2004). It is noted that this directive stated "the following tenets . . . **must be adhered to.**" Accordingly, failure to adhere to any one of these tenets means that a *prima facie* obviousness rejection has not been made. Applicant's invention has not been considered as a whole, nor does the combination of references suggest the desirability and thus the obviousness of Applicant's invention, as discussed more fully below.

Claim 1 recited in part:

...using an application programming interface (API) for each driver in said plurality of separate drivers, wherein said API is substantially identical for each of said drivers in said plurality of separate drivers;

The Office Action stated in part:

...using an API for each driver in the plurality of separate driver [drivers 712 - 714, Fig. 1; col. 4, lines 47 - 64 of Shoji], wherein the API is substantially identical for each of the drivers in the plurality of separate drivers [col. 2, lines 43 - 56 of Shoji];

The cited portions of Shoji, col. 2, lines 43 - 56, taught:

The database system of the present invention can be implemented using a novel bossless computer program architecture called ("digital cell technology") comprising a plurality of program modules called "cells." Under this

architecture, each cell is hierarchically equal, i.e., there is no controlling (or boss) cell. ...As explained above, the database system of the present invention comprises a plurality of database drivers which are hierarchically equal [emphasis added]. This structure is compatible with digital cell technology. In this embodiment, the database and interface drivers could be implemented as cells.

Nowhere in the cited section did Shoji teach the substantially identical APIs for each driver in the plurality of separate drivers of Applicant's invention, as recited in Claim 1. Rather, the cited section of Shoji taught that the database drivers are hierarchically equal. This taught away from Applicant's invention in so much that Applicant's invention, as recited in Claim 1, clearly recited a "plurality of data sources ... wherein each data source in said plurality of data sources requires a separate driver to access the data source." Thus, Applicant's system as recited in Claim 1 accommodated any driver schema with the API, and did so without the restriction of hierarchical equality mandated in Shoji. This alone is sufficient to overcome the obviousness rejection of Claim 1.

Claim 1 further recited:

...receiving said single access operation by a merging driver wherein in response to said single access operation, said merging driver accesses each driver in said plurality of separate drivers through said API.

Next, the Office Action stated:

...receiving the single access operation by a merging driver wherein response to the single access operation [col. 5, lines 49 - 67 of DiDomizio], the merging driver access each driver in the plurality of separate drivers through the API [drivers 712 - 714, Fig. 1; col. 4, lines 47 - 64 of Shoji];

The cited section of DiDomizio taught:

In another aspect, the present invention relates to a system for processing at least a first query to retrieve data relevant to the first query from at least a first of a plurality of distributed or target databases. Generally, the system of the present invention includes a computer system for at least receiving a first query from a first user, an extractor for identifying key words, such as nouns, noun phrases, verbs or numbers in the first query, a database structure, such as an LDAP directory, including at least one of a plurality of table-

The cited section of DiDomizio taught nothing about the single access operation as recited in Claim 1; taught nothing about a merging driver as recited in Claim 1; taught nothing about receiving the single access operation by the merging driver as recited in Claim 1; and taught nothing about the merging driver accessing each driver, as recited in Claim 1. Each of these failures is sufficient to overcome the obviousness rejection of Claim 1.

Further, if one were to combine the teachings of Shoji with the teachings of DiDomizio, such a combination would result in a database system formed by combining hierarchically equal drivers, the database system receiving and generalizing an unstructured query to generate a pictorial query. Such an "invention" has nothing whatsoever to do with Applicant's invention as recited in Claim 1 and, therefore, failed to suggest the desirability and the obviousness of the invention. Applicant respectfully requests reconsideration and withdrawal of the obviousness rejection of Claim 1.

Claims 2 to 5 depend from Claim 1 and so distinguish over the combination of references for at least the same reasons as Claim 1. Applicant respectfully requests reconsideration and withdrawal of the obviousness rejection for each of Claims 2 to 5.

Claims 6 and 13 stand rejected for the same reasons as Claim 1. Applicant respectfully traverses the obviousness rejection of each of Claims 6 and 13.

As stated in the Office Action, Claim 6 is a product claim that corresponds to the method of Claim 1 and Claim 13 is a system claim that corresponds to the method of Claim 1.

As discussed above with respect to Claim 1 and incorporated herein by reference, Shoji failed to teach the **substantially identical APIs for each driver in the plurality of separate drivers** and, in fact, taught away from use of a diverse driver schema, as did Applicant's invention as recited in each of Claims 6 and 13. Further, DiDomizio failed to teach **receiving a single access by a merging driver**, as further recited in each of Claims 6 and 13. Further, the resultant combination of the cited references failed to teach the invention as set out in each of Claims 6 and 13. Each of the foregoing failures is sufficient to overcome the obviousness rejection of each of Claims 6 and 13. Applicant respectfully requests reconsideration and withdrawal of the obviousness rejection of each of Claims 6 and 13.

Claims 7 to 12 depend from Claim 6 and so distinguish over the combination of references for at least the same reasons as Claim 6. Applicant respectfully requests reconsideration and withdrawal of the obviousness rejection for each of Claims 7 to 12.

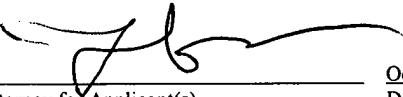
Claims 14 to 17 depend from Claim 13 and so distinguish over the combination of references for at least the same reasons as Claim 13. Applicant respectfully requests reconsideration and withdrawal of the obviousness rejection for each of Claims 14 to 17.

Claims 1 to 17 remain in the application. Applicant respectfully requests allowance of all pending claims.

If the Examiner has any questions relating to the above, the Examiner is respectfully requested to telephone the undersigned Attorney for Applicant.

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on October 11, 2005.

  
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Attorney for Applicant(s)

October 11, 2005  
Date of Signature

Respectfully submitted,



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